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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on his mission to Turkey from 25 November to 2 December 2016. During his visit, the Special Rapporteur was given access to locations of deprivation of liberty throughout the country and was able to conduct confidential interviews with detainees of his choosing, for which he expresses his appreciation to the Government of Turkey.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey*

Contents

		Page
I.	Introduction	3
II.	Legal framework	3
	A. International and regional level	3
	B. National level	4
III.	Assessment of the situation	5
	A. General observations	5
	B. Torture and ill-treatment	6
	C. Conditions of detention	8
	D. Safeguards and prevention	10
IV.	Conclusions and recommendations	16
	A. Conclusions	16
	B. Recommendations	18

* Circulated in the language of submission only

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, conducted a visit to Turkey, at the invitation of the Government, from 27 November to 2 December 2016.

2. During his visit, he met high-level officials of the Ministries of Foreign Affairs, Justice and the Interior (including the Turkish National Police and the General Command of the Gendarmerie) in Ankara, magistrates of the Constitutional Court and the Court of Cassation, the Public Prosecutors of Ankara and Diyarbakır, a representative of the Human Rights and Equality Institution of Turkey, members of the Council of Forensic Medicine in Istanbul, and representatives of administrative, judicial and security services of the areas he visited (Ankara, Diyarbakır, Şanlıurfa and Istanbul). He also met with representatives of United Nations agencies and of the diplomatic community, with civil society organizations, activists, lawyers and doctors, and with victims of torture.

3. The Special Rapporteur expresses his sincere appreciation to the Government of Turkey for renewing the invitation extended to his predecessor to visit the country, despite the volatile security situation and the various political challenges. In particular, the Special Rapporteur wishes to thank the Ministry of Foreign Affairs for its excellent cooperation, for its efforts to facilitate meaningful official meetings, and for granting access to detention facilities in full compliance with the terms of reference for fact-finding missions by special procedures mechanisms.

4. The Special Rapporteur shared his preliminary findings with the Government at the conclusion of his visit. He expresses his appreciation for the responses provided by the Government to his preliminary observations on 17 December 2016,[1] and in particular for the measures taken in response to his observations as announced by the Government during the interactive dialogue with the Human Rights Council of 2 March 2017.

5. Due to maximum duration of five working days imposed by the Government in respect of visits by special procedure mandate holders (most States grant 10–14 working days), the Special Rapporteur was unable to conduct a thorough analysis of all areas of relevance to his mandate, and focused primarily on torture and ill-treatment alleged to have occurred in the contexts of the failed coup attempt in July 2016 and the escalating violence in the south-east of the country. As a consequence, important issues of interest, such as the extracustodial use of force by the police and security forces, the situation of irregular migrants, of residents of psychiatric clinics and of other particularly vulnerable populations, gender-based violence, and the issue of the death penalty, could not be examined with sufficient rigour. While fully acknowledging the logistical and administrative burden that such visits represent for the host State, the Special Rapporteur strongly encourages the Government to favourably reconsider the said time constraints for future visits by special procedure mandate holders so as to ensure comprehensive and objective reporting on all issues of mutual interest.

II. Legal framework

A. International and regional level

6. Turkey is a party to the main United Nations human rights treaties prohibiting torture and other cruel, inhuman or degrading treatment or punishment, including the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

[1] Press release on the Special Rapporteur's preliminary observations, of 17 December 2016. Available at www.judiciaryofturkey.gov.tr/Press-Release-on-the-Preliminary-Observations-of-Nils-MELZER-the-UN-Special-Rapporteur-on-Torture

Punishment and its Optional Protocol, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

7. At the regional level, Turkey is a member of the Council of Europe and is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and its Protocols Nos. 2–12, and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocol No. 2.

B. National level

8. The Constitution was adopted in 1982 and has been revised numerous times, with the aim — among other things — of putting in place new mechanisms for safeguarding human rights, namely the Ombudsman Institution and a system for individual applications to the Constitutional Court. Since the Special Rapporteur's visit, constitutional amendments in favour of a presidential system have been adopted, through a national referendum held on 16 April 2017.

9. In its article 17, the Constitution enshrines the right to be free from torture and other ill-treatment and the right not to be subjected to penalties or treatment incompatible with human dignity. In its article 19, it provides for the right to liberty and security of the person and the immediate notification of the next of kin in cases of arrest or detention.

10. Moreover, article 90 of the Constitution gives priority, in cases of conflict, to international human rights treaties concluded by Turkey over national law, and specifies that such treaties carry the force of law.

11. The Criminal Code of Turkey, of 2004,[2] criminalizes torture and defines it as a serious crime. Pursuant to articles 94–96, any public official who acts towards a person in a manner incompatible with human dignity, which causes that person to suffer physically or mentally or to lose the ability to act according to his or her own will, or which dishonours or insults a person, is to be punished by imprisonment for a period ranging between 3 and 12 years (art. 94), with up to life imprisonment in aggravated cases (art. 95). The Special Rapporteur welcomes the abolishment of the statute of limitations with regard to the offence of torture, by an amendment passed in April 2013.[3]

12. The Code of Criminal Procedure[4] provides for additional safeguards against torture and ill-treatment. Article 147 prescribes legal standards for the interviewing of suspects, which are aimed at the prevention of torture and ill-treatment and which include notification of charges, the right to legal counsel, the right to remain silent, notification of the arrest to next of kin, and the obligation to record every interview in writing, or to make an audio and video recording in the case of individuals suspected of acts of terrorism.

13. In addition, the exclusionary rule enshrined in article 148 provides that confessions obtained through any bodily or mental intervention that impairs the free will, such as misconduct, torture, the administering of medicines or drugs, physical coercion or threats, shall not be used as evidence and shall not serve as a basis for evidence in any proceedings. In article 206 (2) (a) it is reiterated that any evidence that has been unlawfully obtained shall not be admissible in court, and in article 217 (2) it is confirmed that criminal charges may only be proven on the basis of evidence that was obtained lawfully.

14. An additional safeguard is the temporal limitation of custody by the police or the gendarmerie. Generally, the authorized period of custody is a maximum of 24 hours.[5] For

[2] Law No. 5237 of 2004.

[3] Law No. 6459, art. 9.

[4] Law No. 5271 of 2004, available at https://www.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code_html/2004_Criminal_Procedure_Code.pdf and at www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf.

[5] Code of Criminal Procedure, art. 91 (1), and Regulation on Apprehension, Detention and the Taking of Statements, of 2005, sect. 1.

certain offences specified by law, the period of custody can be extended to 48 hours, and for terrorism-related offences it may be extended to a maximum of four days.[6]

15. The suspicion that an individual may have committed torture is specifically listed as a reason for arrest (art. 100 (3) (a) (4)), regardless of the risk of abscondment or of the destruction of evidence.

16. Article 2 (2) of the Law on the Execution of Sentences and Security Measures provides that cruel, inhuman, degrading or humiliating treatment may not be used in the execution of sentences and security measures.

17. Law No. 6458 on Foreigners and International Protection includes a provision on subsidiary protection for individuals in danger of being subjected to torture if returned to their country of origin or habitual residence (i.e. on non-refoulement).

18. Law No. 2559 on the Powers and Duties of the Police was significantly revised in March 2015 through the adoption of Law No. 6638, which introduced, in particular, enhanced police powers to conduct searches, to use weapons, to wiretap, to detain individuals without a warrant and to remove demonstrators from scenes of protest, and which also provided for a significant reform of the gendarmerie.

19. Law No. 6332, of 21 June 2012, established the National Human Rights Institution of Turkey. On 20 April 2016, the National Human Rights Institution of Turkey was replaced by the Human Rights and Equality Institution of Turkey, which is mandated to carry out "activities for protecting and improving human rights, ensuring the right to equal treatment of persons, preventing discrimination in enjoying rights and freedoms recognized by law and acting in accordance with these principles, effectively combating torture and ill-treatment and functioning as the national prevention mechanism in this regard".[7]

III. Assessment of the situation

A. General observations

20. The Special Rapporteur is of the view that, in principle, the institutions, Constitution and legislation of Turkey provide sufficient institutional and legislative safeguards against torture and ill-treatment.

21. Turkey experienced several military coups between the 1960s and the 1990s, and torture and other forms of ill-treatment, particularly in the context of security operations, have been a long-standing problem. After the taking of power by the Justice and Development Party (AKP) in 2002, and until mid-2015, reports of torture and other forms of ill-treatment significantly decreased.

22. In particular, the Special Rapporteur commends the introduction, between the late 1990s and 2007, of safeguards for the prevention of torture and other forms of ill-treatment — including limitations on the duration of custody, prompt access to legal counsel, the mandatory medical examination of detainees, tighter standards for the recording of arrests and detentions and for the taking of statements, and the installation of audiovisual recording systems in many detention and interview rooms of counter-terrorism departments. The Special Rapporteur is also encouraged by the lifting in 2013 of the statute of limitations for the offence of torture. He also especially welcomes the express commitment of the Government to a zero-tolerance policy on torture, as consistently emphasized by all officials of the Government during their dialogue with the Special Rapporteur.

23. Nevertheless, the Special Rapporteur notes with concern that there seemed to be a serious disconnect between declared government policy and its implementation in practice.

[6] Code of Criminal Procedure, art. 91 (3) and art. 251 (5), and Regulation on Apprehension, Detention and the Taking of Statements, sect. 14.

[7] Law No. 6701, art. 1.

Most notably, despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the south-east of the country, formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment.

24. In the aftermath of the failed coup, on 20 July 2016, the Government of Turkey declared a state of emergency, derogated from both the European Convention on Human Rights and the International Covenant on Civil and Political Rights, and adopted a series of decrees with the force of law (*kanun hukmunde kararname* (KHK)) extensively interfering with the human rights of persons suspected to be associated with the coup plotters or the Gülenist movement. In particular, in the period between the failed coup and the Special Rapporteur's visit, approximately 100,000 public officials had been suspended or dismissed, and more than 40,000 individuals had been arrested, including military and police officers, judges, prosecutors, human rights defenders, journalists, lawyers and health-care personnel. Since the Special Rapporteur's visit, many more such arrests have reportedly taken place.

25. While fully recognizing the difficult circumstances that Turkey is facing in the presence of multiple threats against the security of the State, the Special Rapporteur stresses the need for urgent action on the part of the Government with a view to ensuring the strict compliance of all State officials with existing laws and safeguards for the prevention, investigation and prosecution of torture and other cruel, inhuman or degrading treatment or punishment.

B. Torture and ill-treatment

1. Arrests and detentions in the aftermath of the failed coup d'état of 15 July 2016

26. According to numerous consistent allegations received by the Special Rapporteur, in the immediate aftermath of the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations such as sports centres, stables and the corridors of courthouses. More specifically, the Special Rapporteur heard persistent reports of severe beatings, punches and kicking, blows with objects, *falaqa*, threats and verbal abuse, being forced to strip naked, rape with objects and other sexual violence or threats thereof, sleep deprivation, stress positions, and extended blindfolding and/or handcuffing for several days. Many places of detention were allegedly severely overcrowded, and did not have adequate access to food, water or medical treatment. Also, both current and former detainees alleged that they had been held incommunicado, without access to lawyers or relatives, and without being formally charged, for extended periods lasting up to 30 days.

27. Medical examinations conducted by the forensic expert accompanying the Special Rapporteur indicated that physical signs consistent with allegations of ill-treatment were visible only in a limited number of cases, most probably due to the time that had elapsed between the alleged abuse and the visit of the Special Rapporteur. However, many detainees showed signs of anguish, distress and psychological trauma consistent with their allegations, and, in some cases, mental disturbances, such as depression and post-traumatic stress disorder requiring psychological or psychiatric support.

28. Within approximately two weeks of the failed coup, once detainees had been transferred to regular detention facilities, conditions and treatment appear to have improved significantly. Most detainees arrested in relation to the failed coup stated that, apart from occasional verbal threats and insults, they were no longer subjected to torture or ill-treatment.

2. Arrests and detentions related to violence in the south-east

29. The south-eastern regions of Turkey have been marked by violence between State authorities and the armed Kurdistan Workers' Party (PKK) since the 1980s. Following the

breakdown of the government-initiated peace process in July 2015, there has been an escalation of violence in the region. The situation deteriorated further after the attempted coup of July 2016. Most notably, the state of emergency decrees apply not only to offences related to the failed coup, but to all terrorist offences, including those occurring in the context of the violence in the south-east.

30. The Special Rapporteur received numerous testimonies of torture and other forms of ill-treatment of both male and female individuals suspected of being members or sympathizers of the PKK and other groups affiliated with the Kurdish insurgency. The Special Rapporteur also met with individuals suspected of affiliation with Islamic State in Iraq and the Levant (ISIL). Most instances of ill-treatment were alleged to have been inflicted upon apprehension and arrest, as well as during transit to the detention location, predominantly by the special operations teams of the police or by the gendarmerie. Ill-treatment was also alleged to have occurred during interrogations in the early hours and days of detention in holding cells. The methods of torture and other forms of ill-treatment were reported to have included severe beatings, kickings, punches, verbal assaults, threats of sexual violence, prolonged stress positions and handcuffing, and being deprived of adequate access to water, food and sleep. One individual reported having been raped with objects.

31. Reportedly, the ill-treatment occurring in relation to the failed coup largely ceased a few weeks after the coup. However, torture and ill-treatment in relation to the violence in the south-east was alleged to be widespread in the initial phase of custody and interrogation. The Special Rapporteur received consistent reports that, in that context, the aim of torture and ill-treatment was to coerce victims to confess or to denounce others from a list of names and photographs of suspected members of terrorist organizations. Many inmates reported that they had been arrested on the basis of false accusations or denunciations made against them under torture. Physical ill-treatment was generally reported to have ceased after transfer to a regular detention facility. However, occasional abuse and degrading treatment allegedly continued, including verbal assaults and threats, slaps, and invasive body searches, as well as male guards sexually threatening or harassing female detainees during transfers and denying them privacy during medical examinations.

3. Solitary confinement

32. The Special Rapporteur heard numerous allegations that a great number of high-ranking military officers, Supreme Court judges, prosecutors, and other civil servants arrested for reasons related to the failed coup, as well as high-ranking members of pro-Kurdish political parties, had been held in prolonged solitary confinement. The Special Rapporteur was unable to confirm those allegations due to the time constraints imposed on his visit. Nevertheless, he wishes to recall that prolonged (of more than 15 days) or indefinite solitary confinement contravenes the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, because of the prisoner's inability to communicate with the outside world, solitary confinement also gives rise to situations conducive to other acts of torture or ill-treatment.

4. Strip searches and invasive body searches

33. The Special Rapporteur notes with concern that invasive body searches have frequently been alleged to have been conducted in a disrespectful manner both on the inmates themselves and on visitors. Body searches on inmates are reportedly also performed upon arrival in the prison, before and after transfers or other temporary exiting of the premises such as for medical treatment, and sometimes even inside the detention centres and cells, without prior warning or apparent justification. The frequency of such searches is reported to have increased significantly since the failed coup in July 2016.

34. The Special Rapporteur appreciates the clarifications made by the Government in relation to the practices, in its press release of 17 December 2016,[8] and recognizes that there may be situations when such searches are required. However, given that any such search creates an inherently delicate situation marked by a significant risk of abuse, body searches should be avoided and, to the extent possible, less intrusive measures for detecting the entry of illegal objects should be used. Whenever body searches are unavoidable, authorities must be particularly careful to ensure that they are conducted in a respectful manner, consistent with the person's human dignity, with the right to privacy, and with the absolute prohibition of cruel, inhuman or degrading treatment.

C. Conditions of detention

1. Overview

35. At the time of the visit, Turkey was reported to have 373 penitentiaries and detention facilities[9] with an approximate capacity of 180,000 inmates.[10] 1,264 police stations with 1,197 lock-ups, 2,012 custodial areas in the internal security units of the gendarmerie, and 303 lock-ups under 81 provincial public security branch offices, with a total of 52,000 guards.[11]

36. The attempted coup and the subsequent mass arrests reportedly led to an influx of 42,083 detainees[12] into the detention system, taking the prison population in Turkey up to 203,255 (which is ordinarily around 150,000, including 51,000 persons detained for terrorism-related offences and 2,255 persons detained in connection with organized crime).[13] By a decree of 17 August 2016, approximately 44,000 inmates were released to accommodate the new arrivals. Nevertheless, the massive influx of detainees led to overcrowding in many facilities and significantly increased the proportion of pretrial detainees. The Special Rapporteur took note of the latest figures provided by the Ministry of Justice in June 2017 indicating that Turkish prisons were holding more than 224,878 individuals, which further compounded the risk of overcrowding.[14]

37. In the course of his visit, the Special Rapporteur visited the Sincan prison complex in Ankara, including its F-type high security section and its female detention facilities, the D-type high-security and E-type closed prisons in Diyarbakır, including the male, female and juvenile sections, the counter-terrorism police holding cells in Şanlıurfa, two police stations in Esenler, Istanbul, and the closed No. 9 prison in the Silivri Penitentiaries Campus in Istanbul.

38. In general, the facilities visited were purpose-built detention centres, and in terms of infrastructure were adequately equipped. Overall, conditions of detention were found to be satisfactory or, at least, acceptable in the circumstances, save for the particular problems observed under the headings below.

2. Overcrowding

39. All the facilities visited, except the Silivri Penitentiaries Campus in Istanbul, were significantly overcrowded, with occupancy ranging from 125 per cent to more than 200 per

[8] Press release on the preliminary observations of the Special Rapporteur, available at www.judiciaryofturkey.gov.tr/Press-Release-on-the-Preliminary-Observations-of-Nils-MELZER-the-UN-Special-Rapporteur-on-Torture.

[9] Figure as per the Special Rapporteur's meeting with a representative of the General Directorate of Prisons and Detention Houses on 28 November 2016.

[10] Figure as at 18 February 2016, provided by the General Directorate of Prisons and Detention Houses.

[11] Figures as per the Special Rapporteur's meeting with a representative of the General Directorate of Prisons and Detention Houses on 28 November 2016.

[12] Figure as at 4 January 2017, provided by the Ministry of Justice to the Parliamentary Coup Investigation Commission.

[13] Figures as per the Special Rapporteur's meeting with a representative of the General Directorate of Prisons and Detention Houses on 28 November 2016.

[14] See www.cte.adalet.gov.tr.

cent of the actual capacity. In some institutions, the overcrowding appeared to have resulted from the mass arrests after the failed coup. In other locations, overcrowding appears to have been persistent for several years, particularly in the women's block of the Diyarbakır E-type detention facility.[15]

40. According to the authorities, the overcrowding was largely the result of the intensification of the violence in the south-east since July 2015, and of the massive influx following the attempted coup in July 2016. In order to absorb this influx, several new penitentiaries were being constructed. While the Special Rapporteur welcomes the authorities' efforts to alleviate the overcrowding through the construction of new detention facilities, he also encourages the Government to consider alternative law enforcement measures to deprivation of liberty.

3. General conditions of detention

41. The overcrowding observed negatively affected various aspects of the general conditions of detention, including access to work, training, recreational and cultural activities, and visits and phone calls with family members and lawyers, all of which are important for the well-being and rehabilitation of inmates.

42. While distance learning was available to all inmates, the Special Rapporteur is particularly concerned about the lack of schooling and insufficient access to recreational activities for juvenile pretrial detainees whom he visited in the juvenile section of the E-type closed prisons in Diyarbakır. Also, adult inmates under high-security regimes were not allowed to work at all.

43. The Special Rapporteur welcomes the fact that, with the exception of persons in police custody, yards were accessible to all inmates and open for most of the day in all the detention centres he visited.

44. In most of the facilities visited, cells and common areas were cold. According to consistent testimonies from inmates, although the physical heating infrastructure seemed adequate, the heating reportedly was turned on only during the night.

45. The majority of facilities visited, with the exception of the police holding cells, had adequate ventilation or an adequate supply of fresh air, as well as sufficient natural and artificial light in the cells.

46. For all inmates charged with or convicted for terrorist-related offences, family visits and phone calls have been reduced — to two visits and two phone calls each month — and have been put under systematic surveillance. Ordinary criminals continue to be entitled to four one-hour visits each month, as well as to more extensive telephone rights.

4. Separation of pretrial detainees from convicts, and of male, female and juvenile inmates

47. While a strict separation between male, female and juvenile inmates was maintained in all the institutions visited, pretrial detainees and convicts were often intermingled in the same cells and blocks. Separation was made on the basis of the type of crime, with most detainees charged with or convicted of terrorist-related offences held separately from others. Occasionally, adolescent girls were found being held in blocks for female adults. The Special Rapporteur recommends that the Turkish authorities introduce separation between pretrial detainees and convicts in all its prison facilities.

5. Medical care, sanitary conditions and nutrition

48. While access to health care is guaranteed in principle, the overcrowding prevalent in most detention facilities seems to have had a negative impact on prompt and adequate access to medical care.

[15] At the time of the Special Rapporteur's visit on 29 November 2016 the detention centre was operating at an occupancy of 1,481 inmates, whereas its capacity is for 1,035 inmates.

49. Thus, in the large facilities visited, the number of and/or hours of attendance of general practitioners was insufficient for the number of inmates. This shortcoming was even more acute in regard to dental care, which frequently could not be provided in accordance with the detainees' needs. Psychiatric and/or psychological support was often not available at all or was not provided as a routine preventive measure. For example, the D-type closed prison in Diyarbakır had only one general practitioner and one dentist for a population of over 1,000 inmates.

50. While medical equipment and supplies were generally found to be adequate in the detention facilities, and treatment was provided free of charge, the Special Rapporteur received allegations that inmates with medical conditions requiring transfer to hospital were only transferred in groups, once a sufficient number of detainees requiring such transfer had been reached, thus making prompt access to the required medical care problematic.

51. While adequate treatment and isolation of contagious diseases seemed to be provided when required in individual cases, there seemed to be no specific programmes for the management of contagious diseases, HIV/AIDS or drug addiction, all of which frequently occur in detention facilities.

52. Sanitary and hygienic conditions observed in the facilities were generally satisfactory, though they were also affected by the predominant overcrowding. Often, 20 to 30 detainees had to share one toilet and one shower, without sufficient hot water for each detainee.

53. Nutrition appeared to be sufficient in all detention centres visited, both in terms of the quantity and quality of food provided and in terms of protein and vitamin content. Also, inmates had access to sufficient quantities of drinking water.

6. Situation in police holding cells

54. The Special Rapporteur is seriously concerned about the conditions of detention in police holding cells. Such cells are designed to hold detainees for a few hours, or at most for one or two days, but are clearly not adequate for holding detainees for longer periods. This has raised serious problems, in view of the extension of the duration of police custody to 30 days. The Special Rapporteur therefore appreciates the Government's announcement during the interactive dialogue with the Human Rights Council on 2 March 2017 that, in the meantime, the extension is reduced to seven days, and urges its complete revocation without delay.

55. In the police stations visited, holding cells generally had only barred doors, and were often under 24-hour video surveillance, thus depriving inmates of the most basic degree of privacy. In some places, constant bright lighting caused inmates to lose their sense of time. Cells generally had no windows and were too small to hold inmates for more than a few hours, and sometimes detainees were held in groups of 20–30 persons in shared rooms of clearly inadequate size. Detainees shared toilet and shower facilities outside their cell, which could only be accessed upon request. In some facilities, inmates reported that their cells had not been heated at all until heaters were finally installed shortly before the Special Rapporteur's visit. In some instances, mattresses and covers were allegedly only provided a few days before the Special Rapporteur's visit, and the facilities had visibly been freshly painted.

56. Detainees in police stations had no access whatsoever to a yard, sunlight and fresh air, which may be acceptable for a few hours, but clearly is not for periods exceeding 48 hours.

D. Safeguards and prevention

1. Emergency decrees and derogations from regional and international treaties

57. Following the failed coup, the Government declared a state of emergency and notified the Council of Europe on 22 July 2016 that it was derogating from the European Convention on Human Rights, without specifying any particular provisions. With effect

from 2 August 2016, it also derogated from the International Covenant on Civil and Political Rights, as permissible under article 4, in regard to articles 2, 3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27.

58. Turkey also adopted a series of decrees with the force of law significantly affecting the human rights and procedural guarantees of individuals, groups and organizations suspected of being involved with the attempted coup, with the Gülenist movement or in other activities perceived to be related to terrorism.

59. In July 2017, the Turkish Cabinet extended the state of emergency for a further three months.

60. While the Special Rapporteur recognizes the imperative for Turkey of protecting its citizens and institutions and its right to take extraordinary measures in times of emergency, he is mindful that derogations from international treaties may not "exceed those strictly required by the exigencies of the actual situation".[16]

61. With regard to the International Covenant on Civil and Political Rights, the Special Rapporteur is particularly concerned by the derogation from article 10 (on humane treatment and human dignity), article 2 (3) (on effective remedies) and article 14 (on fair trial). The Human Rights Committee has noted that while article 14 is not included in the list of non-derogable rights of the Covenant, "the guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights". The Committee concluded that "deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times".[17]

62. The mass arrest, dismissal or suspension of civil servants, including judges, prosecutors and other representatives of the judiciary, has entailed major setbacks and delays in the administration of justice in Turkey.[18]

2. Prolonged detention without access to counsel or to judicial review

63. It is during the first hours and days after arrest that the risk of torture and other forms of ill-treatment is the highest. The right to have access to a lawyer promptly after apprehension and at all stages of the investigation process constitutes an effective safeguard against such abuse.

64. Of particular concern to the Special Rapporteur is Decree Law No. KHK/667,[19] adopted on 22 July 2016, which extended the maximum duration of detention without charge or judicial review to 30 days (art. 6 (a)),[20] and which severely curtailed access to lawyers for detainees suspected of posing a risk to public security, or of exchanging information with a terrorist organization (art. 6 (d)). It provides for officials to be present and/or to make audio and video recordings of meetings between detainees and their lawyers, and to seize any documents exchanged or kept during those meetings. In addition, interviews and meetings between counsel and client may be limited upon the public prosecutor's orders. Legal professionals who are themselves suspected of having supported the attempted coup may be removed from legal counsel duties (art. 6 (g)).

65. Furthermore, after the adoption of the decree dated 25 July 2016, No. KHK/668,[21] the period of custody without access to a lawyer was extended to up to five days (art. 3

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[16] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, paras. 65–67.

[17] See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6.

[18] According to information provided on 4 January 2017 by the Ministry of Justice to the Parliamentary Coup Investigation Commission.

[19] Decree on measures to be taken under state of emergency, available at www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)061-e.

[20] Reiterated in art. 3 (a) of Decree Law No. KHK/668.

[21] Decree law on measures to be taken under the state of emergency and arrangements made on certain institutions and organizations, available at www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)061-e.

(m)), and if the investigation may be compromised, the defence counsel's right to examine the case file can be restricted by a decision of the prosecutor (art. 3 (l)). While the Special Rapporteur notes that no statement is to be taken from a suspect while he or she is held without access to counsel (art. 3 (m)), this provision exposes suspects de facto to incommunicado detention and, thus, makes them particularly vulnerable to torture and other forms of abuse. Moreover, prolonged incommunicado detention can even constitute a form of ill-treatment in and of itself.[22]

66. The Special Rapporteur regrets that some of those provisions have been made permanent. Thus, article 3 of Decree Law No. 676, dated 29 October 2016, added the possibility of being detained without access to a lawyer, albeit only for 24 hours, to article 154 of the Code of Criminal Procedure (Law No. 5271), and limitations on confidential contacts between detainees and their counsel were introduced in Law No. 5275 on the execution of penalties and security measures. Consequently, Decree Law No. 684, dated 23 January 2017, removed the ban on lawyers' access to their clients in the first five days of the detention period. The Law on the Fight Against Terrorism (counter-terrorism law)[23] restricts access to a lawyer for suspects detained for terrorist offences for the first 24 hours in detention at the request of a prosecutor and by the decision of a judge, but specifies that the suspect may not be interrogated during that period (art. 10 (b)).

67. On 23 January 2017, Decree Law No. 684 reduced the maximum duration of detention without charge or judicial review from 30 days (as introduced through Decree Law No. 667) to seven days, which can be extended upon request of the prosecutor for another seven days if deemed necessary. While the Special Rapporteur sincerely welcomes this important first step, he urges the Government of Turkey to normalize the situation as soon as possible by further reducing the duration of police custody to a maximum of 24 to 48 hours, as stipulated in the Code of Criminal Procedure.

3. Counter-terrorism law and decree framework

68. The main domestic legal provisions regarding terrorism and terrorist offences are contained in the counter-terrorism law[24] and the relevant articles of the Criminal Code. The definition of "terrorist offender" in article 2 of the counter-terrorism law was amended in 2006 and is rather broad and vague, as is the definition of "terrorism" in article 1. Concerns have been raised that this law may be used for politically motivated prosecutions of political opponents, human rights defenders and journalists, in particular for alleged "membership of a terrorist organization".[25]

69. The Special Rapporteur is particularly concerned by a new law that was published on 14 July 2016 (Law No. 6722),[26] which grants counter-terrorism forces a perceived, albeit overturnable, de facto immunity from prosecution for acts carried out in the course of their operations in the south-east. More specifically, under the new law, which applies retroactively, the executive authorities must give permission before any soldiers or civilians taking part in counter-terrorism operations can be prosecuted for any offences committed while carrying out their duties, thus rendering investigations into allegations of torture or ill-treatment by the security forces involved more difficult, if not impossible.

4. Complaint and investigation procedures

70. In principle, prosecutors can and must investigate all allegations of torture or ill-treatment ex officio, regardless of an individual complaint. All complaints that are received must be followed up by the Public Prosecutor. Complaints may be brought by the victims themselves, or their family or lawyer, by civil society organizations, or by a monitoring mechanism such as the Ombudsman Institution. According to the General Directorate of

[22] See General Assembly resolution 68/156 (para. 27).

[23] Law No. 3713, adopted in 1991 and amended in 1995, 1999, 2003, 2006 and 2010. Available at www.ecoi.net/file_upload/1226_1335519341_turkey-anti-terr-1991-am2010-en.pdf.

[24] Ibid.

[25] United Nations country team submission for the 2015 universal periodic review of Turkey (para. 37).

[26] Available from www.resmigazete.gov.tr/eskiler/2016/07/20160714.htm.

Prisons and Detention Houses, individual complaints are the most important mechanism in place for the investigation of torture and ill-treatment, and a hotline has been put in place for families to lodge complaints.[57] In addition, officials reportedly screen open source material, such as reports by non-governmental organizations and media pieces, for allegations of ill-treatment, which is then treated like an individual complaint.

71. However, throughout his visit, the Special Rapporteur received consistent allegations pointing to a near-complete absence of complaints being submitted, transmitted or investigated by officials. In interactions with inmates, lawyers and civil society organizations, the Special Rapporteur was informed that most victims of torture or other forms of ill-treatment did not file complaints with the authorities for fear of retaliation against them or their families, and due to a deep distrust in the independence of the prosecution and the judiciary and — consequently — in their willingness or ability to adequately investigate and adjudicate claims. Moreover, many of those who had filed formal complaints reported that no follow-up had been undertaken by the prosecution and the judiciary.

72. Since 2012, the Constitutional Court has been able to receive direct complaints from individuals about violations of their fundamental rights and freedoms as guaranteed in the Constitution and the European Convention on Human Rights and its Protocols, provided that no effective remedy had been given by lower courts. Complaints of torture can also be lodged directly with the Constitutional Court if the prosecutor fails to initiate an investigation into torture allegations received.

73. The Special Rapporteur was informed that the Constitutional Court had received approximately 121,000 complaints in total since the introduction of this mechanism, and that it continued to receive approximately 20,000 individual complaints per year. Since the failed coup, the number of complaints had increased significantly, amounting to 69,752 individual petitions in 2016 alone.[58] By the time of the Special Rapporteur's visit, the Constitutional Court had reportedly issued 38 judgements finding a violation of the prohibition of torture (3 in 2014, 10 in 2015, and 25 in 2016).[59]

5. Lack of effective investigations into torture allegations, and impunity

74. The low number of investigations and prosecutions initiated in response to allegations of torture and ill-treatment seemed grossly disproportionate to the alleged frequency of such violations, indicating insufficient determination on the part of the responsible authorities to take such cases forward.

75. The Ankara Chief Public Prosecutor's Office, for example, advised that, from 1 January 2016 to 1 December 2016, only 24 law enforcement officers had come under suspicion of having committed torture, without a single one of those cases leading to an indictment.[60] While about half of those cases were still pending, several of them had been dismissed for lack of grounds for legal action or for lack of jurisdiction. Of seven cases of suspected deliberate injury (not amounting to torture) in the same time period, only one had led to an indictment. Given the large number of allegations and of public reports about the prevalence of torture and other forms of ill-treatment in the immediate aftermath of the failed coup, it is troubling to see that, in one of the areas most affected by the attempted coup, only a handful of allegations appear to have been registered by the Prosecutor's Office. Moreover, while the information available to the Special Rapporteur does not allow for any detailed review of individual cases, it appears disconcerting that, out of 31 suspected cases of torture or deliberate injury by law enforcement officers, only one single case would actually lead to the indictment and prosecution of the alleged perpetrator.

[57] As communicated to the Special Rapporteur in a meeting on 28 November 2016.

[58] Figures provided by the Constitutional Court via the Permanent Mission of Turkey.

[59] Figures as per the Special Rapporteur's meeting with representatives of the Constitutional Court on 28 November 2016.

[60] Statistics received from the Ankara Chief Public Prosecutor's Office, via the Ministry of Foreign Affairs, on 1 December 2016.

76. In a meeting with representatives of the Ministry of the Interior, the Special Rapporteur was informed that only five "serious allegations" had been received regarding torture and ill-treatment, and that investigations had been conducted and disciplinary measures implemented.[11] It remained unclear whether or not any other (i.e. less than "serious") allegations had been received, for which no investigation had been initiated, and whether or not criminal sanctions had been imposed in any of the five cases.

77. The Special Rapporteur welcomes the deliberations on the prohibition of torture in several cases that have been transmitted to him by the Court of Cassation. In particular, he welcomes the verdict of the Court in November 2013 whereby a landmark decision against eleven Turkish officials was upheld in the case of Engin Çeber, who had been tortured to death while in custody in 2008.[12] The Special Rapporteur also welcomes other verdicts of the Court of Cassation, which either overturned lower court judgements that, contrary to the evidence presented, did not find State officials guilty of torture,[13] or which upheld such decisions if compliant with the evidence and the law.[14]

78. However, the Special Rapporteur believes that, in the light of the great number of allegations of torture and ill-treatment having resulted from the present situation in Turkey, failure to investigate and prosecute a significant number of State officials for torture or ill-treatment strongly indicates insufficient determination on the part of the responsible authorities to actually live up to the Government's official policy of zero tolerance on torture.

79. The Special Rapporteur has not been made aware of any cases in which, in accordance with articles 148, 206 and 217 of the Code of Criminal Procedure, evidence obtained under torture has been excluded from subsequent legal proceedings.

80. The Special Rapporteur urges the Government to remind the relevant judicial authorities of their duty to investigate and prosecute all public officials suspected of committing, ordering, condoning or covering up torture or other ill-treatment, including in situations where they knew or ought to have known that torture was about to be, was being, or had been committed.

6. Lack of review of emergency decrees and related human rights violations

81. The decrees with the force of law (*Kanun hükmünde kararnameler*) that were introduced following the failed coup have imposed sweeping security measures and have deviated significantly from the usual procedural and administrative guarantees. Article 9 of the first decree, No. KHK/667, for example, states that "legal, administrative, financial and criminal liabilities shall not arise in respect of persons who have adopted decisions and fulfil their duties within the scope of this Decree Law", and article 10 adds that "stay of execution cannot be ordered in cases brought as a result of the decisions taken and acts performed within the scope of this Decree Law". By means of article 37 of the subsequent decree law, No. KHK/668, this lack of liability is extended to all decisions and measures adopted "with a view to suppressing the coup attempt and terrorist actions performed on 15 July 2016".

82. In accordance with the above-mentioned provisions and with article 148 (1) of the Constitution, the Constitutional Court decided in a landmark ruling on 9 August 2016 that it was not competent to review the emergency decrees, thereby effectively depriving individuals who had suffered violations of their rights and freedoms under the decrees of any remedy.

83. The Commission for Examination of the State of Emergency Procedures was created on 23 January 2017 by Decree Law No. KHK/685 to review applications relating to measures taken within the scope of the decree laws, and in particular applications relating

[11] The meeting took place on 28 November 2016.
[12] Decision No. 2013/26551 of the Court of Cassation in case No. 2013/13411.
[13] Decision No. 2014/1575 of the Court of Cassation in case No. 2013/1182, and decision No. 2015/12301 of the Court of Cassation in case No. 2014/35857.
[14] Decision No. 2014/5503 of the Court of Cassation in case No. 2013/10602.

to dismissals and suspensions from the civil service as well as to closure of organizations. Since the Special Rapporteur's visit, the Constitutional Court has reviewed a number of cases and has concluded that it is not competent to receive the complaints because legal remedies have not been exhausted. The Constitutional Court has therefore referred the thousands of cases related to measures taken under the emergency decree laws to the newly established Commission.[11]

64. While the Special Rapporteur welcomes, in principle, any mechanism designed to review measures taken under the decrees, the composition of the Commission may raise legitimate questions regarding its independence and impartiality, given that the majority of its members will be appointed by the Government.[12] The Special Rapporteur notes that allegations of torture and ill-treatment could not be reviewed by the Commission. Concerns have also been raised that the Commission may be considered as an additional domestic remedy that has to be exhausted before individuals or institutions can have their cases reviewed by the Constitutional Court (and possibly later by the European Court of Human Rights).

65. Lastly, the Special Rapporteur is troubled by a document that appears to have been issued by the Prosecutor's Office in Trabzon on 5 January 2017, stating that there were no grounds to investigate and prosecute a torture complaint resulting from measures taken under the state of emergency decrees, due to the immunity effectively given to State officials under those decrees. While the Special Rapporteur was unable to verify the authenticity of that document and, therefore, cannot prejudge its accuracy, the alleged content of the decision would appear to be consistent with the situation observed by him of perceived de facto impunity for torture and other forms of ill-treatment at the hands of State officials.

F. Lack of monitoring of detention locations

66. In Turkey, several bodies, both international and national, are allowed or even mandated to inspect locations where people are deprived of their liberty.

67. At the international and regional level, as Turkey is a signatory to the European Convention on Human Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, monitoring visits may be conducted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur welcomes the visit to Turkey by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in September 2016, and commends the excellent cooperation shown by the Turkish authorities during his own visit to the country.

68. At the domestic level, public prosecutors may inspect detention centres, under article 92 of the Code of Criminal Procedure; police stations and holding cells are subject to inspections by governors, mayors and civil inspectors; the Human Rights Inquiry Committee of Parliament may visit penal institutions within the scope of parliamentary audit; and the Monitoring Boards for Prisons and Detention Centres[13] may also conduct visits. In addition, the Ombudsman Institution[14] and the newly established Human Rights and Equality Institution of Turkey may conduct on-site monitoring of detention locations in Turkey, and may receive complaints from detention houses.

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[11] See www.anayasa.gov.tr/en/olaganustu-donemler-kararlari/ (last visited 6 June).

[12] The seven-member Commission will be appointed by the Prime Minister (three members), the Minister of Justice (one member), the Minister of the Interior (one member) and the High Council of Judges and Prosecutors (two members).

[13] See CAT/C/TUR/4, paras. 242–244.

[14] Entered into force on 29 June 2012, following the constitutional amendments of 2010.

89. The Special Rapporteur is concerned, however, that the numerous national bodies that are formally mandated to monitor detention locations do not appear to function properly in practice, and thereby fail to assume their crucial role in contributing to the prevention of torture and ill-treatment throughout Turkey.

90. For example, the Human Rights and Equality Institution of Turkey, established in April 2016 to replace the National Human Rights Institution of Turkey,[39] has been taking up its duties with considerable delay. Apart from monitoring equality and human rights in general, the Human Rights and Equality Institution of Turkey is the designated organization for the national preventive mechanism[40] as detailed in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, at the time of the visit, no commissioners had been appointed to the institution, which, despite having several working-level staff, remained unable to assume its decisive preventive role of carrying out regular, independent and objective inspections of all places of detention in Turkey.

91. Other monitoring mechanisms were experiencing a change of personnel at the time of the Special Rapporteur's visit, with the former Ombudsman having been relieved of his duties. The Special Rapporteur welcomes the appointment of a new Ombudsman by Parliament in November 2016. The prison monitoring boards, which had been criticized for their lack of impartiality, had been dismantled by decree after the July 2016 coup, and at the time of the visit had not yet been reconstituted. Moreover, civil society organizations reportedly were not allowed to monitor detention centres and other places of deprivation of liberty.

8. Forensic medical examinations and documentation of torture

92. Professional forensic examinations and documentation about allegations of torture and ill-treatment as well as about deaths in custody are a crucial component in any effective investigation and in the prosecution of such allegations. The Istanbul Protocol (the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the Minnesota Protocol (the Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions) provide fundamental tools for guiding such documentation and investigations.

93. The Special Rapporteur and his accompanying forensic expert observed that general medical examinations appeared to be routinely performed upon arrest and after arrival at detention centres. Examinations were reportedly conducted by medical personnel without any specific training in documenting signs of physical and psychological abuse, and did not involve any psychological assessments, thus entailing an increased risk of deficient descriptions, documentation, and interpretations of traumatic injuries.

94. The forensic medical examination by specialists of inmates who show signs of physical or psychological trauma, with photographs, in accordance with the Istanbul Protocol, does not appear to be a routine procedure. Occasionally, such examinations have allegedly been delayed until the visible signs of the trauma have disappeared.

95. In cases of death in custody, autopsies were reportedly systematically performed, but it was not possible to assess whether or not they were carried out in accordance with international minimum standards, and in particular, the Minnesota Protocol. Numerous interlocutors mentioned that, according to official records, a number of detainees suspected of being affiliated with the Gülenist movement had committed suicide in custody, although there was no confirmation of this cause of death by independent autopsies.

96. Since the failed coup of July 2016, several forensic experts have been arrested and detained, including the director of the Council of Forensic Medicine, and pursuant to Decree Law No. 679 of 6 January 2017, numerous forensic specialists and other Ministry of Justice personnel have been dismissed or suspended from their positions. According to allegations received by the Special Rapporteur and his forensic expert, official forensic

[39] Established in Law No. 6332 of 21 June 2012.

[40] By Cabinet decree dated 9 December 2013.

services have been under pressure from authorities not to properly document abuse, and forensic examinations have either not been conducted in line with the Istanbul Protocol or have not been conducted at all. For example, forensic experts would allegedly be asked to assess a roomful of detainees in the space of a few minutes, without being able to conduct individual examinations and confidential interviews. Requests made by detainees and their families for examinations by independent physicians have allegedly been denied.

97. The Special Rapporteur is very concerned about the alleged interference of the authorities with the independence of the forensic services and with the proper implementation of their mandate, which makes the proper documentation and effective investigation of torture and ill-treatment difficult if not impossible and contributes further to impunity for abuse.

IV. Conclusions and recommendations

A. Conclusions

98. **The Special Rapporteur expresses his sincere appreciation to the Government of Turkey for the excellent cooperation afforded during his visit, and for the efforts of the representatives of the Ministry of Foreign Affairs to facilitate and organize meaningful official meetings.**

99. **The Special Rapporteur also thanks the United Nations Resident Coordinator in Turkey and his Office for the support provided before and throughout his visit.**

100. **The Special Rapporteur fully acknowledges the extreme volatility of the security situation prevalent in Turkey during the time of his visit, and the right and duty of the Government to take security measures to protect its citizens from acts of violence and political overthrow. However, just as much as there can be no justification for acts of terrorism and violent overthrow, there can also be no justification, under any circumstances, for acts of torture and other cruel, inhuman or degrading treatment or punishment, or for any form of impunity for such acts.**

101. **To the best of his personal judgment and conviction, based on numerous credible and consistent allegations and other information received from various independent sources, and having consulted extensively with the Turkish authorities, the Special Rapporteur has come to the following main conclusions regarding the prevalence of torture and other cruel, inhuman or degrading treatment or punishment in Turkey at the time of his visit and during the months preceding it:**

(a) **In the immediate aftermath of the failed coup of 15 July 2016, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and of preliminary detention in police or gendarmerie lock-ups or in unofficial detention locations. This initial phase, marked by arbitrariness, and most of the ill-treatment, ceased after approximately two weeks, when most detainees were transferred to regular places of detention;**

(b) **In relation to the violence in the south-east, torture and ill-treatment continues to be widespread in the initial phase of custody and interrogation and is aimed primarily at coercing suspects to confess or to denounce other suspects of terrorist offences. As a result, numerous arrests are made on the basis of unreliable accusations or denunciations made under torture;**

(c) **The small number of investigations reported by the authorities, whether ex officio or upon complaint, is in no way proportionate to the persistent allegations of torture and other ill-treatment received by the Special Rapporteur. The majority of victims reported that they had not filed formal complaints for fear of retaliation against them and their families, and because of their distrust in the independence of the prosecution and the judiciary and, consequently, in the willingness or ability of the prosecution and the judiciary to adequately investigate and adjudicate their claims.**

When formal complaints had been filed, there had allegedly been no follow-up by the responsible authorities;

(d) The sweeping security measures taken by the Government in response to the failed coup of 15 July 2016 have resulted in a general sense of intimidation and distrust in many segments of the population, preventing not only inmates and their families, but also civil society, lawyers, doctors and many State officials from initiating or participating in any procedure that may be perceived — rightly or wrongly — as opposing or criticizing the Government, including, most notably, the documentation and investigation of alleged acts of torture and other ill-treatment;

(e) Recently passed legislation and statutory decrees, some of which have been partly repealed in the meantime, created an environment conducive to torture and other forms of ill-treatment, most notably:

(i) The extension of the period of custody without judicial review to 30 days;

(ii) The extension of the period without access to a lawyer to five days;

(iii) The denial of confidential exchange between inmates suspected of terrorist crimes and their lawyers;

(iv) The introduction of immunity from criminal prosecution — albeit overturnable — for counter-terrorist forces operating in the south-east.

(f) The suspension or dismissal of thousands of judges, prosecutors and other officials has caused severe delays in the processing of individual judicial and administrative cases and complaints;

(g) Due to dismissals and to delays in administrative appointment processes, the Human Rights and Equality Institution of Turkey, which also exercises the function of the national preventive mechanism as detailed in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, currently cannot carry out regular, independent and objective inspections of all places of detention in Turkey;

(h) Except for police holding cells, which are clearly inadequate for holding inmates for more than 24 to 48 hours, conditions of detention are generally satisfactory or, at least, acceptable in the circumstances. The most important source of shortcomings was the prevalent overcrowding (ranging from 125 to 200 per cent of the capacity), which negatively affected access to work, training, recreation, medical care and visits and contact with family members and lawyers, all of which are important for the well-being and rehabilitation of inmates.

B. Recommendations

102. The Special Rapporteur firmly believes that there is no better deterrent to torture and other cruel, inhuman or degrading treatment or punishment than the unambiguous expression and determined implementation of a strong national will to prevent, investigate, prosecute and punish such abuse. The Turkish authorities have the ability to prevent torture; they have proven this over the past decade and they consistently and unequivocally expressed their continued commitment in that respect throughout the visit. It is in a spirit of respect and support of the Government's declared policy of zero tolerance for torture, therefore, that the Special Rapporteur offers the following recommendations to the Government of Turkey:

103. First and foremost, on the policy level, the Special Rapporteur appeals to the Government to publicly reinforce its zero tolerance policy on torture, to take all legislative and administrative measures to implement that policy, and in particular to unequivocally make it clear to State officials at all levels that they are expected and, indeed, obliged to report and investigate all allegations of torture and to bring perpetrators to justice.

104. **Regarding the national legal framework, the Special Rapporteur recommends that the Government:**

(a) **Consider terminating the declared state of emergency, and ending its derogations from the International Covenant on Civil and Political Rights and the European Convention on Human Rights, as soon as practically possible;**

(b) **Ensure that provisions introduced under the decrees (*kanun hükmünde kararname*) during the state of emergency are not unduly perpetuated or entered into regular legislation;**

(c) **Amend the Law on the Fight Against Terrorism so as to ensure that it may not be employed for politically motivated prosecution of peaceful dissent and of criticism of the Government;**

(d) **Reduce the maximum duration of police/gendarmerie custody to 24 to 48 hours, as stipulated in the Code of Criminal Procedure, including for terrorism-related offences.**

105. **With a view to ensuring conditions of detention in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Special Rapporteur recommends that the Government:**

(a) **Urgently adopt measures to reduce overcrowding, including through the more extensive use of alternatives to incarceration (such as bail and electronic surveillance for pretrial defendants, and probation and early release for convicts), and to the extent possible and appropriate, by reviewing current sentencing policies and providing for alternative, non-custodial penalties, in particular for lesser offences, and by providing the judicial authorities with the resources required to accelerate proceedings;**

(b) **Ensure adequate access to work, training, education and recreation for all offenders, including terrorism-related convicts, with a view to establishing a penal system aimed at rehabilitating and reintegrating offenders and ensuring their physical and mental health;**

(c) **Ensure the separation of pretrial inmates from convicts;**

(d) **Ensure the prioritization of alternatives to detention for all juvenile offenders and, in exceptional circumstances where detention is necessary, ensure their detention in separate rehabilitation facilities that meet their specific needs as children, and ensure their continued schooling and recreational activities;**

(e) **Ensure the daily presence, in cooperation with the public health services, of a sufficient number of qualified medical health staff, including psychiatric, psychological and dental specialists, to perform the medical examination on detainees' entry to the institution, to carry out regular check-ups, including routine analytical blood and urine tests and thorax radiology (by mobile units), and to provide prompt medical assistance to all persons deprived of their liberty despite temporary overcrowding;**

(f) **Ensure that general prison staff receive adequate training on how to deal with particularly vulnerable categories of detainees and how to identify first signs of potential mental illness;**

(g) **Ensure that the medical registration forms currently used are adapted so that they meet the recommendations of the Istanbul Protocol;**

(h) **Ensure the adoption and implementation of special health programmes to address situations that occur frequently in detention facilities, such as the spread of contagious diseases, or inmates with a drug addiction or with HIV/AIDS.**

106. **Regarding the prevention of torture and ill-treatment, and safeguards, the Special Rapporteur recommends that the Government:**

(a) **Repeal provisions of the *kanun hükmünde kararname* that may increase the risk of persons being subjected to torture and other cruel, inhuman or degrading treatment or punishment;**

(b) **Ensure prompt access to legal counsel of the suspect's choosing from the moment of apprehension and through all stages of the criminal proceedings, including for detainees suspected of terrorism-related offences or arrested under the state of emergency and the *kanun hükmünde kararname*;**

(c) **Ensure the confidentiality of interactions between lawyers and their clients, including for individuals suspected of terrorism-related offences or arrested under the state of emergency and the *kanun hükmünde kararname*;**

(d) **Terminate all incommunicado detention and detention in unofficial detention locations, including during times of emergency;**

(e) **Ensure that statements or confessions taken from persons deprived of their liberty, other than those made in the presence of a judge and with the assistance of legal counsel, have no probative value in proceedings against that person; and that confessions and testimonies that may have been obtained through torture or other ill-treatment are not admitted as evidence in any proceedings;**

(f) **Improve the forensic medical capacity and infrastructure within places of detention, and ensure the full independence of all forensic medical staff, their unhindered access to all detainees on the basis solely of the detainees' individual medical needs, and their ability to examine alleged victims of torture and ill-treatment freely and without supervision;**

(g) **Ensure adequate training of all health professionals involved with detainees, including specifically on the forensic assessment and documentation of torture and other ill-treatment, in accordance with the Istanbul and Minnesota Protocols;**

(h) **Ensure that photographic documentation of trauma injuries becomes an obligatory routine practice and provide all medical services with adequate equipment for this purpose;**

(i) **Ensure and facilitate regular, effective and independent monitoring of all institutions or locations where individuals may be deprived of their liberty, by national and local bodies such the national preventive mechanism, by international and regional bodies and by specialized civil society organizations;**

(j) **Ensure the full institutional, political and financial independence, impartiality and professionalism of the national preventive mechanism, and the compliance of the national human rights institution with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

107. **Regarding prompt, thorough and impartial investigations, the Special Rapporteur recommends that the executive and judicial authorities:**

(a) **Ensure prompt, thorough and impartial investigation and prosecution of all alleged offences involving torture or other cruel, inhuman or degrading treatment or punishment, including those reported to have been committed in the aftermath of the failed coup of July 2016 and in the context of the ongoing violence in the south-east of the country;**

(b) **Ensure that investigations are launched ex officio, without any need for formal complaints by victims, prosecutors or investigative magistrates, whenever there are reasonable grounds to suspect torture or ill-treatment;**

(c) **Ensure that perpetrators of torture or other cruel, inhuman or degrading treatment or punishment are held criminally responsible and that adequate penal sanctions and disciplinary measures are imposed on convicted perpetrators.**

108. **Regarding sexual and gender-based abuse, the Special Rapporteur recommends that the Government:**

(a) **Ensure that all detainees remain under the direct supervision of guards and law enforcement officers of the same gender at all times, including during transfers;**

(b) **Ensure that no guards, law enforcement officers or other persons of the opposite gender, except for close family members or the required medical personnel, are present during body searches, strip searches and any other physical examinations;**

(c) **Ensure that medical examinations and consultations of all detainees are conducted in full confidence, without the supervision of guards and law enforcement officers;**

(d) **Include the examination and investigation of sexual and gender-based violence into the standard examination of torture and cruel, inhuman or degrading treatment or punishment in accordance with the criteria of the Istanbul Protocol.**